IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1562 OF 2005

Akbar Mohammad Mulla & Anr. ...Appellants

Vs.

Sayyadhusen Musa Sayyad & Ors. ...Respondents

Mr.N.V.Bandiwadekar for the Appellants
Mr.P.M.Arjunwadkar for the Respondents.

CORAM: A.S.OKA, J.
DATED: MAY 5,2006.

P.C.:

1. Heard Advocate for the Appellants and Advocate for the Respondent No.1. The Respondent No.1 filed a suit for possession in respect of a residential premises against the Appellants on the ground that the Appellants were the licensees in respect of the suit premises. The defence of the Appellants was that they were the tenants in respect of the suit premises. The Trial Court decreed the suit and the decree has been confirmed by the Appellate Court.

2. Shri Bandiwadekar for the Appellants submitted that the Appellate Court has recorded a finding that the evidence of P.W.No.1-Laila Sayyad deserves to be excluded on the ground that the said witness who was the wife of the Respondent No.1-Plaintiff was not competent to depose on behalf of the Respondent No.1. He submitted that if this is the finding of

the Appellate Court, then in fact, there is absolutely no evidence on record to show that the Appellants were the licensees. The Appellants were under no obligation to prove that they were the tenants. Secondly, he submitted that the issues of tenancy framed by the Trial Court could not have been decided by the said court as the Civil Court had no jurisdiction to decide the said issue.

3. I have considered the submissions. The Respondent No.1 approached the Civil Court with the case that the possession of the Appellants was purely permissive as licensees. The Appellants defended the suit by contending that they were the tenants. Except this plea, no other title was set up by the Appellants. Both the parties have led the evidence. It is obvious that unless the fact that the Appellants were tenants was established, decree for possession was to follow as no other title was set up by the Appellants. The Courts below have recorded a finding of fact that the Appellants have failed to establish the plea of tenancy. The Courts below have held that there was no evidence on record of the tenancy in the form of documents. It is clear that there was no evidence on record to show that any rent was forwarded by the Appellants after April 1995. Thus, there is a concurrent finding of fact that the Appellants have failed to establish their case. The Appellate Court has held that it is not possible to accept the plea of tenancy. There is no reason

to interfere with the concurrent finding of fact recorded by the Courts below on this aspect.

4. So far as the second contention of Shri Bandiwadekar is concerned, it is well settled that the issue of jurisdiction is to be decided with reference to the averments made in the plaint. The plea of tenancy of the Defendants was raised in the written statement. If the Appellants had established that they were the tenants, the suit would have been dismissed. As the Appellants failed to establish that they were the tenants in respect of the suit property, the courts below have accepted the case of the Respondent No.1 that the Appellants were the licensees and were in permissive possession. The Trial Court had jurisdiction to pass a decree for possession. There is no merit in the Second Appeal and the same is dismissed with no order as to costs.

5. At this stage, Shri Bandiwadekar for the Appellants prays that ad-interim order passed by this Court may be continued for a reasonable period. The said prayer is opposed by the Respondent No.1. Considering the facts and circumstances of the case, ad-interim order dated 24th March 2006 is extended by a period of 12 weeks from today.

Judge.